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JUL 23 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

BART M. BOTTA, State Bar No. 167051
MARION I. QUESENBERRY, SBN 072308
RYNN & JANOWSKY, LLP
4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660-2423
Telephone: (949) 752-2911
E-Mail: bart@rjlaw.com

Attorneys for Plaintiff
BENGARD RANCH, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

BENGARD RANCH, INC., a corporation, CASE NO.

008 03520

JW
PVT

Plaintiff,

v.

LETT US ONE CORPORATION, a
corporation; ROBERTO L. ROMERO, an
individual,

Defendants.

COMPLAINT FOR VIOLATIONS OF
THE PERISHABLE
AGRICULTURAL COMMODITIES
ACT ("PACA") [7 U.S.C. §499e, et
seq.]

1. BREACH OF CONTRACT;
2. ENFORCEMENT OF
STATUTORY PACA TRUST
PROVISIONS;
3. VIOLATION OF PACA:
FAILURE TO ACCOUNT AND
PAY PROMPTLY

Plaintiff BENGARD RANCH, INC., a corporation, complains and alleges as
follows:

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LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2911
FAX (949) 752-0953

I.

JURISDICTION AND VENUE

1. This court has jurisdiction of this case pursuant to §5(c)(5) of the Perishable Agricultural Commodities Act of 1930 as amended [7 U.S.C. §499(c)(5)] ("PACA") and pursuant to 28 U.S.C. §1331. Venue is proper pursuant to 28 U.S.C. §1391(b).

2. Plaintiff BENGARD RANCH, INC. ("Bengard" or "Plaintiff") is a corporation organized and doing business under the laws of the State of California, with its principal place of business in the City of Salinas, State of California.

3. Plaintiff is informed, believes and thereon alleges that Defendant LETT US ONE CORPORATION ("Lett Us") is and during all times relevant herein was a corporation having a principal business address of Centro Industrial Villa Blanca, Ave. Luis Munoz Marin, Caguas, Puerto Rico 00725.

4. Plaintiff is informed, believes and thereon alleges that Defendant ROBERTO L. ROMERO ("Romero" or "Individual Defendant") is an individual who during all times material herein was an officer, director, and/or shareholder of Lett Us, and who maintains a residence and/or principal place of business located at F1-18 Calle C, San Juan, Puerto Rico 00926.

5. Plaintiff is informed, believes and thereon alleges that The Individual Defendant is and at all times material herein was an insider with actual and constructive knowledge of the PACA trust and the provisions set forth therein and who is and during times relevant herein was responsible for the daily management and control of Defendant Lett Us and who is and during relevant times herein was a statutory trustee under the PACA in a position to control the PACA trust assets that are the subject of this lawsuit.

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II.

FIRST CAUSE OF ACTION

(Breach of Contract Against Defendant Lett Us)

6. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 5 inclusive, of this Complaint as though fully set forth herein.

7. At all times relevant herein, Defendants were engaged in the handling of produce in interstate and/or foreign commerce as commission merchants, dealers and/or retailers subject to the provisions of the PACA and the regulations promulgated by the Secretary of Agriculture of the United States of America pursuant to the PACA.

8. Between on or about November 2, 2007 and December 6, 2007, in a series of transactions, Bengard sold and shipped perishable agricultural commodities to Defendant Lett Us at said Defendant's request, for which said Defendant agreed to pay Bengard in amounts at least as great as the sum of \$49,020.36.

9. At or about the date of each transaction described above, Bengard forwarded to Defendants invoices for said transactions setting forth in detail the amounts owed by said Defendant for Defendant's purchase of the commodities.

10. Plaintiff has repeatedly demanded that Defendants pay the amounts due and owing under the invoices, totaling at least \$49,020.36. However, said Defendants have failed and refused and continue to fail and refuse to pay Plaintiff for the produce purchased and no part of those sums due and owing has been paid.

11. Plaintiff has performed all conditions, covenants and obligations required to be performed by it under the agreements for sales of produce as set forth herein.

12. As a direct and proximate result of the failure of Defendants to remit payment due to Plaintiff as described above, Plaintiff has suffered cumulative losses in the amount of at least \$49,020.36, plus recoverable attorney's fees and interest at the highest legal rate.

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1 **III.**

2 **SECOND CAUSE OF ACTION**

3 **(Enforcement of Statutory Trust Provisions of PACA Against All Defendants)**

4 13. Plaintiff hereby realleges and incorporates by reference paragraphs 1
5 through 12, inclusive of this Complaint as though fully set forth herein.

6 14. Plaintiff at all times relevant herein was engaged in the business of selling
7 and/or shipping perishable agricultural commodities as defined by PACA [7 U.S.C.
8 §499a(4)].

9 15. The perishable agricultural commodities that are the subject of this action
10 were purchased and sold in or in contemplation of the course of interstate and/or foreign
11 commerce.

12 16. Pursuant to 7 U.S.C. §499e(c)(1)-(4) of the PACA upon receipt of the
13 produce sold by Plaintiff to Defendants, Plaintiff became the beneficiary of a floating,
14 non-segregated statutory trust on all of Defendants' perishable agricultural commodities,
15 all inventories of food or other products derived from perishable agricultural
16 commodities, and any receivables or proceeds from the sale of such perishable
17 agricultural commodities or products or assets derived therefrom.

18 17. Pursuant to the statutory trust provisions of PACA [7 U.S.C. §499e(c)(1)-
19 (4)], Plaintiff is informed and believes and thereon alleges that Plaintiff has performed
20 and fulfilled all duties required to preserve their trust benefits in the cumulative amount
21 of at least \$49,020.36 as separately set forth above, for the perishable agricultural
22 commodities sold to Defendant Lett Us, all of which remains past due and unpaid.

23 18. Plaintiff is informed and believes for the reasons alleged herein above, that
24 Defendants and each of them are statutory trustees under PACA. The PACA trust
25 requires Defendants, and each of them, to hold and preserve such goods, inventories,
26 proceeds and receivables in trust for the benefit of Plaintiff until full payment has been
27 made to Plaintiff. Plaintiff is informed and believes and thereon alleges that Defendants
28 have failed to maintain the trust assets and keep them available to satisfy Defendants'

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obligations to Plaintiff in that said Defendants have failed to perform the requirements of said statutory trust provisions, express and implied, and have breached their fiduciary duties to maintain the trust assets, all in violation of the provisions of the PACA Title 7, U.S.C. §499(b)(4) and 7 Code of Federal Regulation §46.46 (1984) and all other pertinent regulations issued by the Secretary of Agriculture pursuant to the PACA.

19. Plaintiff is informed and believes and upon that basis alleges that during times relevant herein, Defendants transferred or diverted the trust assets, and are continuing to so transfer or divert trust assets, namely receivables or proceeds derived from Defendants' sale of produce, to their own use and/or to an unknown third party or parties, in violation of their statutory duties under the PACA to preserve the trust assets for the benefit of Plaintiff. [7 C.F.R. §46.46(c)]. The statutory trust created by the PACA unequivocally gives priority to the interest of Plaintiff on all inventories of products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products that have been transferred to secured or unsecured creditors.

20. As a direct and proximate cause and result of the wrongful acts and omissions of Defendants, Plaintiff has suffered the cumulative loss of at least \$49,020.36, plus recoverable attorney's fees and interest in amounts to be determined, all of which qualifies for protection under the PACA trust.

IV.

THIRD CAUSE OF ACTION

(For Violation Of Perishable Agricultural Commodities Act: Failure To Account And Pay Promptly Against All Defendants)

21. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 20, inclusive, of this complaint as though fully set forth herein.

22. Plaintiff has repeatedly demanded that Defendants pay the amounts due stated above, for produce sold and delivered to Defendants as described above. Despite these demands, Defendants have failed and refused to truly, correctly and accurately

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1 account for and make full payment of the proceeds of those transactions. Therefore,
 2 Defendants have failed to perform the requirements of said contracts of sale, express and
 3 implied, and have breached their duty to account and pay for the produce sold, and have
 4 diverted PACA trust assets to third parties, all in violation of the provisions of the PACA
 5 Title 7, U.S.C. §499e *et seq.* (1930), and all other pertinent regulations issued by the
 6 Secretary of Agriculture to the PACA.

7 23. As a direct and proximate cause and result of the wrongful acts and
 8 omissions of Defendants as alleged above, Plaintiff has suffered the cumulative loss of
 9 \$49,020.36 in net produce sales proceeds due and owing to Plaintiff and wrongfully
 10 withheld or wrongfully diverted by Defendants, plus reasonable attorney's fees and
 11 interest in amounts to be determined.

12
 13 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

14 **FIRST CAUSE OF ACTION**

15 **(For Breach Of Contract)**

- 16 1. For damages in the cumulative amount of \$49,020.36 as against Defendant
- 17 Lett Us, in the combined amount set forth herein;
- 18 2. For interest at the highest legal rate from the date the obligation became due
- 19 and payable to Plaintiff;
- 20 3. For reasonable attorney's fees and costs of suit incurred herein; and,
- 21 4. For such other and further relief as the Court may deem just and proper.
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SECOND CAUSE OF ACTION

(For Enforcement of Statutory Trust Provisions of PACA)

1. For an order requiring Defendants to immediately account for and pay all PACA trust assets to Plaintiff in the combined amount of \$49,020.36 as against Defendants;

2. For interest at the highest legal rate from the date the obligation became due and payable to Plaintiff;

3. For reasonable attorney's fees and costs of suit incurred herein; and,

4. For such other and further relief as the Court may deem just and proper.

THIRD CAUSE OF ACTION

(For Violation Of Perishable Agricultural Commodities Act: Failure To Account And Pay Promptly)

1. For damages in the combined amount of \$49,020.36 as against Defendants;

2. For an order requiring Defendants to immediately account for and pay all PACA trust assets to Plaintiffs in the total amount of \$49,020.36 as against Defendants, jointly and severally;

3. For interest at the highest legal rate from the date the obligation became due and payable to Plaintiff; and,

4. For attorney's fees as deemed reasonable by this Court.

RYNN & JANOWSKY, LLP



DATED: July 17, 2008

By:

BART M. BOTTA, Attorneys for Plaintiff

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RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2911
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JS 44 - CAND (Rev. 11/04)

COPY

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

BENGARD RANCH, INC., a corporation

DEFENDANTS

LETT US ONE CORPORATION, a corporation; ROBERTO L. ROMERO, an individual

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

County of Monterey, California

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)Bart M. Botta, SBN 167051, Rynn & Botta, LLP
4100 Newport Pl Dr 700, Newport Beach, CA 92660, 949-752-2911**ATTORNEYS (IF KNOWN)****II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
- ☐ Removed from State Court
- ☐ Remanded from Appellate Court
- ☐ Reinstated or Reopened
- ☐ Transferred from Another district (specify)
- ☐ Multidistrict Litigation
- ☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

[7 U.S.C. §499c, et seq.] BREACH OF CONTRACT, ENFORCEMENT OF STATUTORY PACA TRUST PROVISIONS, VIOLATION OF PACA, FAILURE TO ACCOUNT AND PAY PROMPTLY

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 49,020.36

JURY DEMAND: ☐ YES ☒ NO**VIII. RELATED CASE(S) IF ANY** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE 7/21/08

SIGNATURE OF ATTORNEY OF RECORD

BART M. BOTTA

JS 44 Page 2
(Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a) F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.